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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CUONG TRAN,

Defendant and Appellant.

H024859

(Santa Clara County

Super. Ct. No. CC234746)

After defendant Cuong Tran punched and kicked his wife for refusing to engage in sexual intercourse with him, he was convicted by jury trial of one count of inflicting corporal injury on a spouse. (Pen. Code, § 273.5, subd., (a).) He was placed on probation for a period of three years, required to serve 300 days in county jail, pay a restitution fine of \$200 and participate in a number of programs.

During trial, the People introduced evidence of prior uncharged acts of domestic violence. The jury was then instructed with CALJIC No. 2.50.02.¹ On appeal,

¹ “Evidence has been introduced for the purpose of showing that the defendant engaged in an offense involving domestic violence [on one or more occasions] other than that charged in the case. [¶] . . . [¶] If you find that the defendant committed a prior offense involving domestic violence, you may, but are not required to, infer that the defendant had a disposition to commit [another] [other] offense[s] involving domestic violence. If you find that the defendant had this disposition, you may, but are not required to, infer that [he] was likely to commit and did commit the crime [or crimes] of

defendant's sole contention is that the trial court committed prejudicial error in giving this jury instruction which permitted the jury to find defendant guilty by proof of less than beyond a reasonable doubt.

As defendant concedes, recently, in *People v. Reliford* (2003) 29 Cal.4th 1007, the California Supreme Court considered and approved CALJIC No. 2.50.01 which addresses prior sex crimes but is substantially similar to CALJIC No. 2.50.02. The court found it not "reasonably likely a jury could interpret the instructions to authorize conviction of the charged offenses based on a lowered standard of proof." (*People v. Reliford, supra*, 29 Cal.4th at p. 1016.) We are bound by this determination. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 462.)

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

WUNDERLICH, J.

MIHARA, J.

which [he] is accused. [¶] However, if you find by a preponderance of the evidence that the defendant committed a prior crime or crimes involving domestic violence, that is not sufficient by itself to prove beyond a reasonable doubt that [he] committed the charged offenses[s]. The weight and significance, if any, are for you to decide. [¶] [Y]ou must not consider this evidence for any other purpose." (CALJIC 2.50.02 (2000 Rev.).)